

Yankwich & Associates, P.C.  
201 Broadway  
Cambridge, MA 02139



Atty. Docket: GPC-900 GNL  
11/27 Dacy

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

S# - 10091, 17

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

### PETITION TO DIRECTOR UNDER 37 C.F.R. §1.182

Sir:

On September 29, 2008, the undersigned filed in the United States Patent & Trademark Office a number of requests for Revocation/New Power of Attorney and Change of Correspondence Address for each in a series of patent and patent application case files that had been forwarded to Yankwich & Associates, P.C. (hereinafter "undersigned") from Ropes & Gray, LLP at the request of the Assignee of record for these patent and patent application case files, GPC Biotech Inc./GPC Biotech AG. The submitted requests had all been executed by the Assignee of record for each of the application and patent files and requested that the Patent Office revoke all previous powers of attorney and to recognize Yankwich & Associates, P.C. as having authorization to receive all correspondence from the USPTO related to the prosecution and maintenance of the applications and to conduct all legal matters related to the applications and patents before the USPTO.

Shortly thereafter, the Office issued a Denial Of Request For Power Of Attorney for a number of these cases refusing to grant power of attorney to the undersigned.

For the reasons stated below, the undersigned believes the denial to grant power of attorney is an error on the part of the Patent Office and, as such, the undersigned submits this Petition to the Director pursuant to 37 C.F.R. §1.182, requesting an order to grant the undersigned full power of attorney to deal with all matters related to the subject applications as requested by the Assignee in each of the cases.

The fee of \$130.00 under 37 C.F.R. §1.17(h) is submitted herewith (check # 8389). The Commissioner is hereby authorized to charge any fees associated with the submission of these papers, or to credit any overpayment to Deposit Account No. 50-0268.

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**REMARKS**

On September 29, 2008, the undersigned submitted a number of one-page Revocation/New Power of Attorney and Change of Correspondence Address documents all executed by an authorized signatory for the Assignee of each case. Each document included a statement that the request was being signed by an officer empowered to execute documents on behalf of the Assignee and identified the Reel and Frame where the assignment for each case was recorded.

However, the USPTO issued a Denial Of Request For Power Of Attorney in a number of the cases (TAB B) despite the fact that the denied requests included all the information required under 37 C.F.R. §1.36. A copy of all the requests for Revocation/Power of Attorney and Change of Correspondence Address as submitted to the USPTO and denied are enclosed herewith (TAB A).

According to the Denial,

"The Power of Attorney is from an assignee and the Certificate required by 37 CFR 3.73(b) has not been received."

However, the undersigned believes the executed documents submitted on September 29 that were denied do fully comply with all the requirements of 37 C.F.R. §3.73(b) and therefore the requests for Power of Attorney in those cases should not have been denied, and such denial was an error on the part of the Patent Office. The undersigned submits this Petition pursuant to 37 C.F.R. §1.182 requesting the Director to compel grant of Assignee's request to appoint the undersigned as Assignee's legal representative for those patent applications and patents for which a Revocation/Power of Attorney and Change of Correspondence Address were submitted. (See, Table 1 below for a listing of all the patent applications and patents for which a Revocation/New Power of Attorney and Change of Correspondence Address were submitted but denied.

Table 1 Listing of denied requests for revocation/new power of attorney

Application. No.	Status	Date Power Of Attorney Request Denied	Attorney Docket
09/583,066	U.S. Pat. No.6,905,818	10/15/08	GPC-251.4 US
10/001,934	pending	10/10/08	GPC-259.3 US
10/091,177	pending	10/10/08	GPC-272.3 US
10/234,985	U.S. Pat. No. 7,135,550	10/10/08	GPC-272.4 US
10/275,046	pending	11/3/08	GPC-260.2P US
10/482,830	abandoned	10/8/08	GPC-176.1P US
10/492,116	pending	10/7/08	GPC-185.1P US
10/536,950	pending	10/14/08	GPC-100.2P US
10/589,840	pending	10/10/08	GPC-298.1P US
10/820,453	pending	10/14/08	GPC-185.2 US

**37 C.F.R. §3.73 Establishing right of assignee to take action**

37 C.F.R. §3.73(b) states in pertinent part:

"(b)(1) In order to request or take action in a patent . . . matter, the assignee must establish its ownership of the patent . . . to the satisfaction of the Director. The establishment of ownership by the assignee may be combined with the paper that requests or takes the action. Ownership is established by submitting to the Office a signed statement identifying the assignee, accompanied by either,

- (i) Documentary evidence of a chain of title . . . or
- (ii) A statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

(2) The submission establishing ownership must show that the person signing the submission is a person authorized to act on behalf of the assignee by:

- (i) Including a statement that the person signing the submission is authorized to act on behalf of the assignee; or
- (ii) Being signed by a person having apparent authority to sign on behalf of the assignee, e.g., an officer of the assignee."

The undersigned respectfully points out that all of the executed Revocation/New Power of Attorney and Change of Correspondence Address documents submitted on September 29 that were denied (TAB A), fully comply with all requirements of 37 C.F.R. §3.73(b)(1) and (b)(2) by: (1) being a signed statement identifying the Assignee, (2) including a statement identifying where documentary evidence of a chain of title from the original owner to the Assignee is recorded by Reel and Frame, and (3) including a statement that the person signing the document is authorized to act on behalf of the Assignee, i.e., "The undersigned, as an officer empowered to execute such documents on behalf of the assignee . . . to the above-identified application . . ." (See highlighted portions of each Revocation/New Power of Attorney and Change of Correspondence Address document that was denied (TAB A).)

Also, Applicants note that, while the Office provides Form PTO/SB/96, entitled "**STATEMENT UNDER 37 CFR 3.73(b)**", to assist applicants/assignees in establishing ownership of a patent or patent application, according to the MPEP, 8<sup>th</sup> ed., page 300-26, right column, establishing ownership by submission of Form PTO/SB/96 is not mandatory but optional:

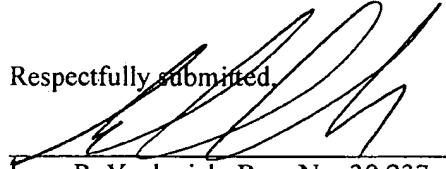
**"X. Forms** Form PTO/SB/96 may be used to establish ownership under 37 CFR 3.73(b)." (emphasis added)

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In the absence of an immediate grant of this Petition, the undersigned respectfully requests that the Office provide a more reasoned statement as to why the Revocation/Power of Attorney and Change of Correspondence Address documents that were denied do not satisfy the requirements of 37 C.F.R. §1.36 and §3.73(b).

Respectfully submitted,

  
Leon R. Yankwich, Reg. No. 30,237  
David G. O'Brien, Reg. No. 46,125  
Attorneys for Applicants  
YANKWICH & ASSOCIATES, P.C.  
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CERTIFICATE OF MAILING

The undersigned hereby certifies that this correspondence is being deposited with the U.S. Postal Service as First Class mail in an envelope addressed to: **MAIL STOP PETITION**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

12/02/2008  
date

  
Meghan F. McFadden

Case No. GPC-272.3 US  
Serial No. 10/091,177  
Applicant(s): Come et al.



Return of this post card, properly stamped, will signify safe receipt in the US Patent & Trademark Office of the following:

- Transmittal Letter;
- Revocation/New Power of Attorney & Change of Correspondence Address

*Filed via First Class Mail on September 26, 2008*